



The State of New Hampshire
Department of Environmental Services



Michael P. Nolin
Commissioner

November 29, 2004

Cleary Cleaners, LLC
Attn: Jay Cleary, Sr.
7 Gonic Road
Rochester, NH 03867

Re: Settlement Agreement for Administrative Fine Docket No. AF 04-055

Dear Mr. Cleary:

Enclosed for your records is a copy of the Motion to Accept Settlement Agreement in the above-captioned matter executed by Anthony P. Giunta, P.G., Waste Management Division Director, and accepted by Commissioner Michael P. Nolin on November 24, 2004.

On behalf of the Department of Environmental Services, thank you for your cooperation in resolving this matter.

Sincerely,

COPY

Michael Scialfani,
Legal Assistant

cc: Anthony P. Giunta, P.G., Director, Waste Management Division
Gretchen R. Hamel, Administrator, DES Legal Unit
Kerry D. Barnsley, Compliance Attorney, DES Legal Unit
Linda Birmingham, DES WMD
James Martin, DES Public Information Officer

Cleary Cleaners, LLC
Attn: Jay Cleary, Sr.
7 Gonic Road
Rochester, NH 03867

**ADMINISTRATIVE FINE
No. AF 04-055**

MOTION TO ACCEPT SETTLEMENT AGREEMENT

NOW COME the Department of Environmental Services, Waste Management Division ("the Division") and Cleary Cleaners, LLC. ("Cleary"), parties to the above-captioned matter, and stipulate to the following:

1. Pursuant to RSA 147-A, the Department of Environmental Services ("DES") regulates the management and disposal of hazardous waste. Pursuant to RSA 147-A:3, the Commissioner of DES has adopted Env-Wm 100-1100 ("Hazardous Waste Rules") to implement this program.
2. Pursuant to RSA 147-A:17-a, the Commissioner of DES is authorized to impose fines of up to \$2,000 per violation for violations of RSA 147-A or rules adopted pursuant thereto. Pursuant to this section, the Commissioner has adopted Env-C 610 and Env-C 612 to establish the fines for such violations.
3. Cleary is a hazardous waste generator that notified the United States Environmental Protection Agency ("EPA") of its activities through DES on July 25, 1985. EPA Identification Number NHD981070196 was assigned to Cleary's site located at 7 Gonic Road, Rochester, NH.
4. As a result of the February 6, 2003 inspection, DES issued Administrative Order No. WMD 03-15 ("the Order") to Cleary.
5. On July 16, 2004 the Division issued a Notice of Proposed Fine and Hearing No. AF 04-55 (the "Notice") to Cleary Cleaners, LLC seeking fines totaling \$62,000 for violations of RSA 147-A and its implementing regulations, the Hazardous Waste Rules.
6. Specifically, the Notice cited Cleary for failing to conduct an adequate hazardous waste determination on waste fluorescent lamps, in violation of Env-Wm 502.01 ("Violation 1"). Pursuant to Env-C 612.05(a) the Division sought a fine of \$1,500 per determination.
7. Specifically, the Notice cited Cleary for failing to conduct weekly inspections of the outdoor hazardous waste storage area and the "Dry Cleaning Area" for three years in violation of Env-Wm 509.02(a)(1) ("Violation 2"). Pursuant to Env-C 612.07(a) the Division sought a fine of \$1,000 per inspection per area, for failing to conduct inspections at one (1) hazardous waste storage area for twenty-five (25) weeks. The Division sought a fine of \$25,000 (i.e., twenty-five (25) inspections at \$1,000 each).

8. Specifically, the Notice cited Cleary for failing to perform hazardous waste training for the following employees with hazardous waste management duties, in violation of Env-Wm 509.02(a)(2): no initial training for two (2) emergency coordinators and no initial training for two (2) hazardous waste handlers ("Violation 3"). Pursuant to Env-C 612.07(b) the Division sought a fine of \$1,750 per individual not trained for initial training, for a potential fine of \$7,000. In addition, pursuant to Env-C 612.03(f)(2) the Division sought a fine of \$2,000 per calendar month that the personnel training program as specified in Env-Wm 509.02(a)(2), was not prepared or implemented, after the deadline specified in writing by DES, for a potential fine of \$14,000. The Division sought a total fine associated with Violation 3 of \$21,000.

9. Specifically, the Notice cited Cleary for failing to maintain an adequate contingency plan on-site, in violation of Env-Wm 509.02(a)(5) ("Violation 4"). Pursuant to Env-C 612.07(e) the Division sought a fine of \$2,000. In addition, pursuant to Env-C 612.03(f)(2) the Division sought a fine of \$2,000 per calendar month that the contingency plan was not prepared or implemented, after the deadline specified in writing by DES, for a potential fine of \$14,000. The Division sought a total fine associated with Violation 4 of \$16,000.

10. Specifically, the Notice cited Cleary for failing to provide security measures at the outdoor Hazardous Waste Storage Area (*i.e.*, sign with the legend "Danger-Unauthorized Personnel Keep Out" was not posted), in violation of Env-Wm 509.02(c)(3) ("Violation 5"). Pursuant to Env-C 612.07(i) the Division sought a fine of \$1,750 per area.

11. Specifically, the Notice cited Cleary for failing to close one (1) satellite accumulation container of hazardous waste "Lint with Perchloroethylene/water mixture" and one (1) satellite accumulation container of hazardous waste "Perchloroethylene" located in the Dry Cleaning Area, in violation of Env-Wm 509.03(d) ("Violation 6"). Pursuant to Env-C 612.07(j) the Division sought a fine of \$1,000 per satellite storage area.

12. Specifically, the Notice cited Cleary for failing to mark one (1) satellite accumulation container of hazardous waste "Lint with Perchloroethylene/water mixture" and one (1) satellite accumulation container of hazardous waste "Perchloroethylene" located in the Dry Cleaning Area, with the words "hazardous waste" and words that identify the contents of the container, in violation of Env-Wm 509.03(g) ("Violation 7"). The potential fine for this violation was included in the fine sought for Violation 6 because the violation occurred in the same satellite storage area.

13. Specifically, the Notice cited Cleary for failing to forward nine (9) copies of hazardous waste manifests, (*i.e.*, MAM929228, MAM971511, MAM982618, MAM990553, MAM996490, MAQ010167, MAQ096983, MAQ104127, and MAQ205438) with signatures, to DES within five (5) days, in violation of Env-Wm 510.02(d) ("Violation 8"). Pursuant to Env-C 610, the Division sought a fine of \$4,500.

14. On September 3, 2004 representatives of Cleary met with representatives of the Division to discuss possible settlement of the issues.

15. As a result of the meeting and subsequent discussions, the parties reached the agreement as follows.

16. The Division agrees to waive the fines associated with Violations 1 and 5 through 8 which are not Class I violations.

17. For Class I violation 2, referenced in paragraph 7, the Division has agreed, due to Cleary's good faith effort to comply that a 20% reduction should be applied. The Division has agreed to reduce the proposed fine by \$5,000, resulting in a fine of \$20,000.

18. For Class I violation 3, referenced in paragraph 8, the Division has agreed, due to the fact that Cleary did send two (2) employees to the Hazardous Waste Coordinator Training on September 23, 2003, to reduce the fine by \$12,000, resulting in a fine of \$9,000.

19. For the Class I violation 4, referenced in paragraph 9, the Division has agreed, due to Cleary having submitted a draft Contingency Plan to DES on September 29, 2003, to reduce the proposed fine by \$14,000, resulting in a fine of \$2,000.

20. The total administrative fine for the Class I violations described above is \$31,000 of which \$9,000 shall be a cash fine paid in accordance with paragraph 21 and \$22,000 shall be satisfied by the Supplemental Environmental Project ("SEP") described in Paragraph 22.

21. Cleary agrees to pay \$9,000 within the next six (6) months as follows:

- a. \$1,500 of the fine shall be due and payable upon execution of this Agreement by Cleary.
- b. \$1,500 shall be paid in five equal payments of \$1,500 due on the first of each month beginning December 1, 2004 and ending with the last payment due on April 1, 2005

22. Cleary must expend at least \$44,000 on the upgrade of dry cleaning machines its plant at 7 Gonic Rd. in Rochester to satisfy their SEP requirement. On August 26, 2004, Cleary purchased two (2) fourth generation Union dry cleaning machines for a total cost of \$53,328, for equipment only. Cleary submitted copies of receipts and lease agreements. These costs will be credited toward the SEP at \$1 for every \$2 spent towards the new equipment. The purchase of the fourth generation dry cleaning machines satisfies the \$44,000 SEP requirement.

23. Payments under Paragraph 21 shall be paid by certified check made payable to: "Treasurer, State of New Hampshire" and mailed to:

Michael Sclafani, Legal Assistant
Department of Environmental Services ~ Legal Unit
29 Hazen Drive, P.O. Box 95
Concord, NH 03302-0095

24. If any payment is made by check or money order that is returned due to insufficient funds, pursuant to NH RSA 6:11-a, DES may charge a fee in the amount of 5% of the face amount of the check or money order or \$25.00, whichever is greater, plus all protest and bank fees, in addition to the amount of the check or money order, to cover the costs of collection.

25. By executing this Agreement, Cleary waives its right to a hearing on or any appeal of the administrative fines identified in the Notice, and agrees that this Agreement may be entered into and enforced by a court of competent jurisdiction.

26. The effective date of this Agreement will be the date on which it is signed by an authorized representative of Cleary the Director of the Waste Management Division, and the Commissioner of DES. After that date, this Agreement may be amended only by written agreement signed by both parties and the Commissioner. Any such amendment will become effective on the date on which it has been accepted by the Commissioner.

27. No failure by DES to enforce any provision of this Agreement after any breach or default will be deemed as a waiver of its rights with regard to that breach or default, nor will such failures be construed as a waiver of the right to enforce each and all provisions of this Agreement on any further breach or default.

WHEREFORE, the parties respectfully request the Commissioner to accept the terms of this Agreement by granting this Motion.

Respectfully Submitted,

Cleary Cleaners, LLC

COPY

11/18/2004
Date

By: Jay Cleary Sr., Owner
Duly Authorized Rep. of Cleary Cleaners, LLC

DES Waste Management Division

COPY

11/24/04
Date

Anthony P. Giunta, P.G., Director

This Motion to Accept Settlement agreement is granted this 24th day of Nov, 2004

COPY
for Michael P. Nolin, Commissioner
Department of Environmental Services